IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:05.12.2007

CORAM

THE HONOURABLE Mr. JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

Civil Revision Petition (NPD) Nos.1972 to 1974 of 1994

Logithakshan .... Petitioner in C.R.P.No.1972/1994

Murugesan ... Petitioner in C.R.P.No.1973/1994

K.S.Kannayan .... Petitioner in C.R.P.No.1974/1994

Vs.

1. E.S.Rahima Bibi
2. K.K.Sahul Hameed
3. K.K.Mohideen Basha
4. K.K.Mohamed Farooq
5. K.K.Mustappa .... Respondents in all the petitions/Land Lord

Civil Revision Petitions are filed under Section 25 of the Tamil Nadu Buildings(Lease and Rent Control) Act 1960 against the fair and decretal order dated 21.3.1994 made in R.C.A.Nos. 16 of 1991,15 of 1991 and 14 of 1991 respectively on the file of District Judge/Rent Control Appellate Authority, Nilgiris confirming the fair and decretal order dated 14.12.1990 made in R.C.O.P.Nos.13 of 1988,9 of 1988 and 8 of 1988 respectively on the file of Rent Controller,Gudaloor.

For Petitioner in all petitions : : Mr. Muthumani Doraisami
Senior Advocate for
Mr.A.Anthony Nirmal

For respondents in all petitions : : Mr.K.P.Gopalakrishnan,Advocate

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C O M M O N O R D E R

C.R.P(NPD)No.1973/1994:

The tenant in R.C.O.P.No.9 of 1988 is the revision petitioner herein. The said petition was filed by the landlords/respondents under Section 14(1)(b) of the Tamil Nadu Buildings(Lease and Rent Control) Act 1960(hereinafter referred to as 'the Act") for demolition and reconstruction on the ground that the petition building is very old and in a dilapidated condition. The tenant/respondent in R.C.O.P.No.9 of 1988 has filed a counter contending that the building is sound and there is no need to demolish the same and only for the purpose of demanding higher rent, the vexatious petition has been filed by the landlords.

2. On behalf of the landlords/ respondents one Shakarun Bi Ameed was examined as P.W.1. apart from examining one Thangappan, Photograper as P.W.2. Exs P1 to P10 were marked on the side of the landlord. On the side of the tenant , the revision petitioner was examined as R.W.1 and the reply notice dated 13.7.1988 was marked as Ex R1. An Advocate Commissioner was appointed to ascertain the age of the building and also the present condition of the building. The learned Advocate Commissioner with the help of an Assistant Engineer,P.W.D., had visited the petition schedule building and filed his report Ex C1 and Plan Ex C2. After going through both oral and documentary evidence, the learned Rent Controller has come to a conclusion that the landlords are entitled to the relief as prayed for in the petition and accordingly allowed the petition, giving three months time to the tenant to vacate and hand over the vacant possession to the landlord. Aggrieved by the findings of the learned Rent Controller, the tenant had preferred an appeal in R.C.A.No.15 of 1991 ,wherein the learned Rent Control Appellate Authority has held that there is no material to interfere with the findings of the learned Rent Controller, has dismissed the appeal thereby confirming the order of the learned Rent Controller, which necessitated the tenant to prefer C.R.P.(NPD) No.1973/1994.

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C.R.P(NPD) No.1974 of 1994:

3.This revision petition was preferred against the Judgment in R.C.A.No.14 of 1991 on the file of the learned Rent Control Appellate Authority/ District Judge,Nilgiris which had arisen out of an order in R.C.O.P.No.8 of 1988 on the file of learned Rent Controller, Gudaloor, which was filed under Section 14(1)(b) of the Act.

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4. On behalf of the landlords one Shakarun Bi Ameed was examined as P.W.1 and Thangappan, Photographer was examined as P.W.2 Exs P1 to P10 were marked on the side of the landlords. The tenant has examined himself as R.W.1 besides exhibiting Ex R1 reply notice dated 13.7.1988. An Advocate Commissioner was appointed to assess the stability of the building with the help of an expert , an Assistant Engineer, P.W.D. The Advocate Commissioner has visited the petition schedule building and filed his report Ex C1 and Plan Ex C2. On the basis of the evidence both oral and documentary, the learned Rent Controller has come to a conclusion that the landlords are entitled to an order of eviction under Section 14(1)(b) of the Act against the respondent/tenant and accordingly allowed the petition, giving three months time to the tenant to vacate and hand over the possession of the petition schedule building. Aggrieved by findings of the learned Rent Controller, the tenant has preferred an appeal in R.C.A.No.14 of 1991 before the learned Rent Control Appellate Authority/District Judge, Nilgiris, who had concurred with the findings of the learned Rent Controller had dismissed the appeal, which necessitated the tenant to prefer C.R.P.No.1974 of 1994.

5. Heard Mr.K.P.Gopalakrishnan, the learned counsel appearing for the respondents, who would contend that since both the Courts below have concurrently held that the buildings in both rent Control Original Petitions are in a dilapidated condition and are required for demolition and reconstruction, had allowed the rent control original petitions filed by the landlords and this Court exercising the revisional power cannot interfere with the findings regarding the facts unless the Judgment of the Appellate Authority in both the appeals are perverse in nature to warrant interference from this Court in these revisions.

6. Both the Courts below relying on Ex C1 Commissioner's report and ExC2 plan have come to a definite conclusion that both the buildings are in a dilapidated condition have ordered eviction to enable the landlords to demolish and reconstruct the same. It is also brought to the notice of this Court that the tenant/revision petitioner in both petitions have not filed any objection to the Commissioner's report ExC1 and Plan Ex C2 in both the cases.

7. Relying on a decision reported in Narayanan-v-Chandrasekaran(2005(3) CTC 693) ,the learned counsel appearing for the respondents/landlords would contend that when the landlords established that he had sufficient funds to demolish and reconstruct and that the fact the building is in a dilapidated condition was proved by an expert opinion, the landlord is

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entitled to get an order of eviction under Section 14(1)(b) of the Act. The relevant observations at paragraph 25 runs as follows:

> " Therefore, it is clear on such evidence adduced on either side that the petition building is more than 100 years old and some of the portions are Madras terraced and some portions are tiled roofing, especially the portions occupied by the tenants Narayanan and Sivasamy are tiled roofing and in fact a wall has been raised to support the roofing in the portion occupied by the tenant Narayanan. In the modern improved Engineering Technology, the portions occupied by the tenants Narayanan and Sivasamy alone can be demolished and new construction can be put up. The landlord has got sufficient means to put up new construction and in fact he has deposited a sum of Rs.8 Lakhs in his name and in the name of his wife and mother in Karaikudiand Mayiladurai. Admittedly, the landlord owned other buildings and as such, funds can be raised through that buildings also.". . . . . Therefore, the requirement of the petition premises in both the petitions, subject matter of these revisions as sought for by the landlord is bonafide and the learned Rent Control Appellate Authority rightly confirmed the eviction order of the learned Rent Controller, considering all these aspects that the requirement of petition premises for demolition and reconstruction is bonafide."

The cases on hand also, the landlords has produced Ex P7 certificate issued by the Bank to show that they had sufficient funds to undertake the construction.

8. The learned counsel appearing for the respondents would submit that once the landlord is able to prove that he is in possession of sufficient income to reconstruct the same and that the building is in a dilapidated condition requires immediate demolition and reconstruction, under Rent Control Act, he is entitled to get an order of eviction. For this proposition of law, the learned counsel appearing for the respondents would rely on a ratio decidenti in P.S.Pareed Kaka and others-v-Shafee Ahmed Saheb(2004(2) CTC 364) wherein the Honourable Apex Court has held in an appeal which had arisen out of the provisions of Karnataka Rent Control Act 1961, as follows:

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"Law is well settled on this aspect Even if the building is in a good condition, if it is not suitable for the requirement of the landlord, he can always demolish even a good building and put up a new building to suit his requirements. It is not necessary for the landlord to prove that the condition of the building is such that it requires immediate demolition, particularly when the premises is required by the landlord. Therefore, it has to be held that the finding of the trial Court cannot be sustained and the High Court on re-appreciation of the evidence, rightly so, held that the landlord has established that his need for all the four petition schedule premises is bona fide and reasonable."

Further referring to an earlier decision of the Honourable Apex Court in Harrington House School.v.Ispathani and another(2002(2) CTC 549 : 2002 SC 2268), it is further being held that:

"In the present case it has been found that the building is an old construction requiring demolition and reconstruction. Out of the total area of the property only a part is built up and substantial portion is lying open and vacant. There is pressure of population on the developing city and several multi-storey complexes have come up in the vicinity of the property. There is nothing to cast a shadow of doubt in a bona fides of the landlords pleading an immediate need for demolition followed by reconstruction. No fault can be found with the finding of the fact arrived at by the High Court. The decision by the Appellate Court was rendered on 25th February, 1994 when three Judge Bench division of this Court in P.Orr.& Sons was holding the field and in view of the construction placed by this Court in P.Orr & Sons , the Appellate Court was persuaded to deny eviction inspite of the findings of facts being for the landlord. The High Court has rightly set aside the Judgment of the Appellate Authority and ordered eviction following the law laid down by the Constitution Bench in Vijay Singh & Others case. It is true that the landlords have not pleaded on the age and condition of the

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building as one of the components of their bona fides but the landlords' need."

In Vijay Singh and others-Vijayalakshmi Ammal,1996(2) CTC 586: 1996(6) CTC 475, this Court has observed in para 10 as follows:

" On reading Section 14(1)(b) along with Section 16 it can be said that is immaterial. The age and condition of the building has been determined and is available for assessing the bona fides of for eviction of a tenant on the ground of demolition of the building for erecting a new building, the building need not be dilapidated or dangerous for human habitation. If that was the requirement there is no occasion to put a condition to demolish within a specified time, and to erect a new building on the same site. Sub Section (1) of Section 16 contemplates that permission has been granted by the Rent Controller under Section 14(1)(b) for demolition of the building, but if such demolition is not carried out in terms of the order and undertaking, then the Rent Controller can order the landlord to put the tenant in possession of the building on the original terms and conditions. If the building is dangerous and dilapidated requiring immediate demolition for safety, then there is no question of the Rent Controller directing the landlord to put the tenant in possession of such building on the original terms and conditions, on account of the failure of the landlord to commence the demolition within the period prescribed. Similarly, there was no occasion to link the demolition of such building with erection of new building and then to give the landlord freedom from the restrictive provisions of the Act for a period of five years from the date on which the construction of such new building is completed and notified to the local authorities concerned. In this background, it has to be held that neither of the extreme position taken by the respondent or the appellants can be accepted. Permission under Section 14(1)(b) cannot be granted by the Rent Controller or mere asking of the landlord, that he proposes to immediately demolish the building in question to erect a new building. At the

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> same time , it is difficult to accept the stand of the appellants that the building must be dilapidated and dangerous, unfit for human habitation. For granting permission under Sectioon 14(1)(b) of Rent Controller is expected to consider all relevant materials for recording a finding whether the requirement of the landlord for demolition of the building and erection of a new building on the same site is bona fide or not. For recording a finding that requirement for demolition was bona fide, the Rent Controller has to take into account(1) bona fide intention of the landlord far from the sole object only to get rid of the tenants;(2) the age and condition of the buildings;(3) the financial position of the landlord to demolish and erect a new building according to the statutory requirements of the Act. These are some of the illustrative factors which have to be taken into consideration before an order is passed under Section 14(1)(b)."

The learned Rent Controller has taken into consideration , the bona fide requirements of the landlord, also considered the age and condition of the building with the help of the Advocate Commissioner's report which was prepared with the help of an Assistant Engineer, P.W.D and also after considering the financial sound status of the landlords as per Ex P7, has come to a definite conclusion that the landlords are entitled to get an order under Section 14(1)(b) of the Act in both the cases which was confirmed in the appeal by the learned Rent Control Appellate Authority in both RCAs, I do not find any reason to interfere with the findings of the learned Rent Control Appellate Authority in R.C.A.Nos.15 of 1991 and 14 of 1991 respectively on the file of the learned Rent Control Appellate Authority, Nilgiris.

9.The learned counsel appearing for the respondents in both revisions would contend that the eviction was ordered in the year 1990 and the escalation cost of building construction materials have risen on many-fold and that he would press for his cost. I am of the view that the request of the learned counsel appearing for the respondents/landlords is reasonable and hence both the C.R.P.Nos 1973 & 1974 of 1994 are dismissed with cost of Rs.3,000/- in each revision.

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10. CRP.1972 of 1994 is dismissed as infructuous because the learned counsel appearing for the respondents would state that the tenant/revision petitioner had already vacated and handed over the possession to the landlords. No costs.

sg

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1.The District Judge/Rent Control Appellate Authority, Nilgiris

2.The Rent Controller, Gudaloor.

3. The Section Officer, VR Section, High Court,
Madras.

+ 4 ccs to Mr. K. P. Gopalakrishnan, Advocate, SR No.71845, 71846

+ 1 cc to M/s. Muthumani Doraisami, Advocate, SR No.72046

CRP(NPD)Nos.1972 to 1974/1994

SJ(CO)
SR/6.12.2007

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